

1 MAGISTRATE JUDGE
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 UNITED STATES OF AMERICA,) No. CR16-5073RBL
11 Plaintiff,)) MOTION TO REOPEN DETENTION
12 v.)) HEARING
13 DANIEL SETH FRANEY,)) **Noted: October 7, 2016**
14 Defendant.)) *Oral Argument Requested*
15 _____))
16

17 Defendant, Daniel S. Franey, by his attorneys, Assistant Federal Public Defender
18 Linda R. Sullivan and Mohammad Hamoudi, respectfully request this Court to release
19 Mr. Franey from custody pending sentencing, pursuant to 18 U.S.C. § 3143(a), finding
20 that there is clear and convincing evidence that he is not likely to flee and does not pose
21 a danger to the safety of any person or the community. Mr. Franey should be placed on
22 pretrial supervision on the least restrictive conditions to assure Mr. Franey's future
23 court appearances as well as the safety of the community.

24 **I. PROCEDURAL HISTORY**

25 On February 8, 2016, Daniel Franey made his initial appearance on a Complaint
26 charging him with five counts of Felon in Possession of a Firearm. At his initial
appearance, Mr. Franey stipulated to detention without argument. Mr. Franey was

1 subsequently indicted on these charges. On July 12, 2016, Mr. Franey entered a guilty
 2 plea to one count of Felon in Possession of a Firearm. Sentencing was originally
 3 scheduled for October 7, 2016, and recently continued until January 27, 2017.

4 **II. ISSUES RELEVANT TO ISSUE OF RELEASE**

5 At the time of his arrest in February, 2016, Mr. Franey lived with his wife and
 6 their two small children, ages 1 and 3, at their home in rural Montesano, Washington.
 7 Mr. Franey, if released, would propose to reside there. The family has lived in the
 8 Montesano area for the past three years and they own a small house there. Mr. Franey
 9 will be able to work on the F/V Ginger, Inc., for Grant Baldwin, as he has in the past.
 10 See Ex. A., Declaration from Mr. Baldwin.

11 Mr. Franey's wife, Genelle, was not employed at the time of Mr. Franey's arrest.
 12 She has been unable to seek employment, given her need to care for their children, both
 13 under 3 years of age. She has no other source of income. She has no family in this area
 14 who could assist with child care or provide financial assistance. She receives food
 15 stamps and some minimal, occasional financial assistance from her parents, primarily to
 16 pay taxes on their home so that they continue to have a place to stay. Any income that
 17 Mr. Franey can provide at this time will assist her and their children immensely.

18 Mr. Franey does not pose a risk of flight. He believes that he is already on a "no
 19 fly" list which certainly prevents him from flying. He and his wife own their home and
 20 would not abandon it. He has a sister in the Westport, Washington area and other
 21 relatives in the Portland, Oregon, area. He has minimal criminal history and no record
 22 of failing to appear for any court appearances. Conditions such as electronic home
 23 monitoring, and others, can be imposed, if necessary, to minimize any risk of flight.

24 Mr. Franey is eager to work and financially support his family, in the event that
 25 he might face additional incarceration. Without his income, they will have a difficult
 26

1 time this coming fall and winter. Additionally, Mr. Franey is also very close to his
2 children and is worried about their well-being, particularly without him being present.

3 **III. ARGUMENT**

4 The defendant acknowledges that, since he has pled guilty and is awaiting
5 sentencing, the provisions of 18 USC § 3143 (a) govern his request for release.
6 Therefore, the court must conclude that there is clear and convincing evidence that Mr.
7 Franey will not flee and that he does not pose a danger to any person or the community
8 at large if released under 18 USC §3142 (b) or (c). There is no evidence that he will
9 flee and no evidence that he is a danger to anyone. Additionally, the court can impose
10 appropriate conditions pursuant to USC §3142 (c) that will assure that he does not flee
11 or pose a danger to anyone.

12 Such conditions could include any form of electronic home monitoring, travel
13 restrictions, and other conditions that would assure the court of his return for future
14 court appearances and guarantee the safety of the community.

15 **IV. CONCLUSION**

16 Mr. Franey's continued detention is unwarranted under both the facts and the
17 law. Accordingly, Mr. Franey, by counsel, respectfully requests that this Court reopen
18 the detention hearing, and enter an order releasing Mr. Franey on the least restrictive
19 conditions to assure Mr. Franey's future court appearances.

20 Dated this 28th day of September, 2016.

21 Respectfully submitted,

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23 *s/ Linda Sullivan*
24 Assistant Federal Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered with the CM/ECF system.

s/ *Amy Strickling*
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